

# **Dual Role Children's Representation: An Examination of Professional and Ethical Considerations**

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# Speed Networking



- (1) Do you think there is an inherent conflict in serving as both a child's attorney and Guardian ad litem? Why or why not?
- (2) What are the biggest challenges you face (or see) in representing a child as both an attorney and a GAL?

## OCGA § 15-11-103 Child's right to an attorney; appointment of attorney

- (a) A child and any other party to a proceeding under this article **shall have the right to an attorney** at all stages of the proceedings under this article.
- (b) **The court shall appoint an attorney for an alleged dependent child.** The appointment shall be made as soon as practicable to ensure adequate representation of such child and, in any event, before the first court hearing that may substantially affect the interests of such child.
- (c) **A child's attorney owes to his or her client the duties imposed by the law of this state in an attorney-client relationship.**

## Rules of Professional Conduct for Attorneys

- Rule 1.1 Competence
- Rule 1.2 Scope/Allocation of Authority
- Rule 1.3 Diligence
- Rule 1.4 Communication
- Rule 1.6 Confidentiality

\*Note: Under the Rules of Professional Conduct, an attorney for a child **owes the same duties** of undivided loyalty, confidentiality, zealous advocacy and competent representation as s/he would for an adult client. PERIOD.

## **BUT**, what about...

### **Rule 1.14 Diminished Capacity**

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, **whether because of minority**, mental impairment or for some other reason, **the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.**

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.



## Standards/Recommendations for Representation of Children in Abuse, Neglect and Dependency proceedings

- ABA Model Act – Aug. 11, 2011
  - [https://apps.americanbar.org/litigation/committees/childrights/docs/aba\\_model\\_act\\_2011.pdf](https://apps.americanbar.org/litigation/committees/childrights/docs/aba_model_act_2011.pdf)
- NACC Recommendations
  - [http://c.ymcdn.com/sites/www.naccchildlaw.org/resource/resmgr/Standards/NACC Standards and Recommend.pdf](http://c.ymcdn.com/sites/www.naccchildlaw.org/resource/resmgr/Standards/NACC_Standards_and_Recommend.pdf)

## OCGA § 15-11-104. Appointment of guardian ad litem

- (a) **The court shall appoint a guardian ad litem for an alleged dependent child.**
- (b) **An attorney for an alleged dependent child may serve as such child's guardian ad litem unless or until there is conflict of interest** between the attorney's duty to such child as such child's attorney and the attorney's considered opinion of such child's best interests as guardian ad litem.
- (d) A court shall appoint a CASA to act as guardian ad litem whenever possible, and a CASA may be appointed in addition to an attorney who is serving as a guardian ad litem.

## § 15-11-105 Duties of guardian ad litem

(a) A guardian ad litem **shall advocate for a child's best interests in the proceeding** for which the guardian ad litem has been appointed.

(b) In determining a child's best interests, **a guardian ad litem shall consider and evaluate all of the factors affecting the best interests of a child in the context of a child's age and developmental needs.** Such factors shall include:

- (1) The physical safety and welfare of such child, including food, shelter, health, and clothing;
- (2) The mental and physical health of all individuals involved;
- (3) Evidence of domestic violence in any current, past, or considered home for such child;
- (4) Such child's background and ties, including familial, cultural, and religious;
- (5) Such child's sense of attachments, including his or her sense of security and familiarity and continuity of affection for the child;
- (6) The least disruptive placement alternative for such child;



## § 15-11-105 Duties of guardian ad litem

### **(7) The child's wishes and long-term goals;**

(8) The child's community ties, including church, school, and friends;

(9) The child's need for permanence, including his or her need for stability and continuity of relationships with a parent, siblings, and other relatives;

(10) The uniqueness of every family and child;

(11) The risks attendant to entering and being in substitute care;

(12) The preferences of the persons available to care for such child; and

(13) Any other factors considered by the guardian ad litem to be relevant and proper to his or her determination.

## § 15-11-105 Duties of guardian ad litem, con't

(c) Unless a child's circumstances render the following duties and responsibilities unreasonable, a guardian ad litem **shall at a minimum**:

(1) Maintain regular and sufficient in-person contact with the child and, in a manner appropriate to his or her developmental level, meet with and interview such child prior to custody hearings, adjudication hearings, disposition hearings, judicial reviews, and any other hearings scheduled in accordance with the provisions of this chapter;

(2) In a manner appropriate to such child's developmental level, ascertain such child's needs, circumstances, and views;

(3) Conduct an independent assessment to determine the facts and circumstances surrounding the case;

(4) Consult with the child's attorney, if appointed separately, regarding the issues in the proceeding;

(5) Communicate with health care, mental health care, and other professionals involved with such child's case;

(6) Review case study and educational, medical, psychological, and other relevant reports relating to such child and the respondents;

(7) Review all court related documents;

(8) Attend all court hearings and other proceedings to advocate for such child's best interests;

## § 15-11-105 Duties of guardian ad litem, con't

- (9) Advocate for timely court hearings to obtain permanency for such child;
- (10) Protect the cultural needs of such child;
- (11) Contact the child prior to any proposed change in such child's placement;
- (12) Contact the child after changes in such child's placement;
- (13) Request a judicial citizen review panel or judicial review of the case;
- (14) Attend judicial citizen panel review hearings concerning such child and if unable to attend the hearings, forward to the panel a letter setting forth such child's status during the period since the last judicial citizen panel review and include an assessment of the DFCS permanency and treatment plans;
- (15) Provide written reports to the court and the parties on the child's best interests, including, but not limited to, recommendations regarding placement of such child, updates on such child's adjustment to placement, DFCS's and respondent's compliance with prior court orders and treatment plans, such child's degree of participation during visitations, and any other recommendations based on the best interests of the child;
- (16) When appropriate, encourage settlement and the use of any alternative forms of dispute resolution and participate in such processes to the extent permitted; and
- (17) Monitor compliance with the case plan and all court orders.

# Hypo #1 Consider this....

You are appointed to represent 8 year old Maddy as both her attorney and as her guardian ad litem. She was removed from her mother's custody after allegations that her mother, Janet, physically disciplined her causing marks and bruises. It later came out that Janet was addicted to methamphetamine. Janet also has a live-in boyfriend, Joe, that Maddy seems to have unresolved feelings about. Sometimes she says Joe is nice to her and sometimes she seems afraid of Joe. Janet began treatment and is doing much better, but DFCS still has concerns about her long history of addiction and her short amount of time in treatment. The Department's position is that "Janet needs to focus on herself right now" and is not ready to have Maddy come home because it will jeopardize her progress.

You have known Maddy for about nine months now. At first, she didn't want to go home because she was afraid of her mom and Joe when they did drugs. But it has been several months and during visitations Maddy has seen that her mom is doing well. Now Maddy most often expresses that she wants to go home with her mom. Sometimes though, she seems to waiver on that and says she is fine where she is. You have a permanency hearing coming up in a few weeks.

## Hypo #1 Discussion questions:

### **Discussion Questions:**

1. What steps do you take to determine if you have a conflict in representing Maddie as her attorney and in also serving as her guardian ad litem?
2. As Maddie's attorney, what other professional responsibilities may be implicated in this scenario? How do you resolve them?



## Hypo #2:

You have been appointed as the child's attorney and you have also been appointed by the court to serve as the child's GAL. John is your client. He is an 11-year-old child who was removed on an emergency basis because of allegations that his mother discontinued her prescription medication for bi-polar disorder against medical advice, and has left John home alone, for days at a time when she is manic. At the upcoming adjudication hearing, you learn that DFCS is requesting a finding of dependency and a disposition that the child remains in DFCS custody while John's mother works a reunification case plan.

John tells you that he wants to go home. He says he is not sure whether his mom is taking her medication or not but that he has not noticed any change in her behavior, toward him or otherwise. He says that has a trusted neighbor whom he could go to for help if he ever needed it – but reiterates that he has never needed it because he can take care of himself.

## Hypo #2 Discussion questions:

### **Discussion Questions:**

1. What steps do you need to take to determine whether you have a conflict?
2. After going through those steps, what is your determination and why?
3. If you determine that you may have a conflict, is there a way to use your out of court advocacy skills to resolve that conflict? If so, how?

Thanks for your time!

For further questions, please contact me at:  
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